

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

|                                |   |                                        |
|--------------------------------|---|----------------------------------------|
| ANTHONY THOMAS CHERNETSKY      | ) |                                        |
|                                | ) |                                        |
| Petitioner,                    | ) | <b>Case No. 3: 00-CV-0571-LRH(RAM)</b> |
|                                | ) |                                        |
| vs                             | ) | <b>MINUTES OF THE COURT</b>            |
|                                | ) |                                        |
| E.K. McDANIEL, <i>et al.</i> , | ) | <b>DATE: <u>November 28, 2005</u></b>  |
|                                | ) |                                        |
| Respondents.                   | ) |                                        |

**PRESENT:**

**THE HONORABLE:** LARRY R. HICKS **UNITED STATES DISTRICT JUDGE**

**DEPUTY CLERK:** LORI M. STORY **REPORTER:** NONE APPEARING

**COUNSEL FOR PETITIONER(S):** NONE APPEARING

**COUNSEL FOR RESPONDENT(S):** NONE APPEARING

**MINUTE ORDER IN CHAMBERS:** XXX

Petitioner has requested a status conference regarding the proceedings in this action (docket #37). Rather than conduct such a conference, the Court will enter a schedule for briefing the issue presented on remand from the Ninth Circuit Court of Appeals.

In light of the United States Supreme Court's holding in *Rhines v. Weber*, 125 S.Ct. 1528 (2005), the Court of Appeals remanded this matter to permit consideration of petitioner's request to hold the matter in abeyance so that he might return to state court to exhaust Ground Two of the instant petition. *See* Memorandum (docket #33).<sup>1</sup> Ground Two raises a claim that petitioner was denied equal protection and due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution as he was denied the right to file a direct appeal.

Petitioner shall be given an opportunity to provide argument and evidence which

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<sup>1</sup> The Court does not read the Order on Remand to allow petitioner to revisit the issue presented in Ground One of the petition, which was dismissed with prejudice.

demonstrates that he has good cause for failing to exhaust the unexhausted claim, that the claim is not clearly meritless, and that he has not been dilatory in his pursuit of his post-conviction remedies pursuant to *Rhines v. Weber*. 125 S.Ct. at 1535.

IT IS THEREFORE **ORDERED** that petitioner shall have thirty days from entry of this Order to file and serve points and authorities under *Rhines* in support of his request to hold this action in abeyance to permit him to return to state court to exhaust Ground Two. Thereafter, respondents shall have thirty days to file and serve their response. Finally, petitioner shall have fifteen days to reply.

IT IS FURTHER **ORDERED** that petitioner's request for status conference (docket #37) is **denied**.

**LANCE S. WILSON, CLERK**

By:                     /s/                      
**Deputy Clerk**